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November 5, 2007

Via Federal Express

General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463
Attn: Jeff. S. Jordan, Supervisory Attorney

RE: MUR 5938

We represent each of *The Indianapolis Recorder* and the Honorable Carolene Mays in connection with MUR 5938 consisting of a complaint filed by Mr. Pierre Quincy Pullins alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Statements of Designation of Counsel have been filed with the Commission. On behalf of our clients, we submitted a timely response to MUR 5938 pursuant to 11 CFR 111.6(a). On October 22, 2007, we received notice from the Commission that on October 15, 2007, Mr. Pullins submitted additional information to the Commission pertaining to the allegations in his complaint.

As with his original complaint, it is difficult to determine what violations of the Act Mr. Pullins might be alleging in the additional information submitted to the Commission. The additional information includes several documents filed with the Marion Superior Court, State of Indiana, in connection with a defamation lawsuit brought by Mr. Pullins against the publishers of *The Indianapolis Recorder* and others.¹ These documents include a Verified Declaration of Carolene Mays, Publisher of *The Indianapolis Recorder*. Mr. Pullins claims that Ms. Mays, "deliberately, in an attempt to mislead the Court, and possibly the F.E.C." failed to state in her declaration that she is a member of the Indiana House of Representatives. This claim strikes us as illogical and rather bizarre.

Ms. Mays' declaration was submitted to the Marion Superior Court in the context of a lawsuit filed against her as Publisher of *The Indianapolis Recorder*. Her declaration was submitted to establish that Mr. Pullins had filed his lawsuit without first complying with the mandatory notice provisions of the Indiana retraction statute. Her position as a State Legislator was simply not relevant to her declaration and she is certainly under no obligation to

¹ We note for the Commission's benefit that the defamation suit brought by Mr. Pullins was, on October 26, 2007, dismissed with prejudice. A copy of the court order dismissing Mr. Pullins's suit, and authorizing an award of attorney's fees against him, is attached hereto.

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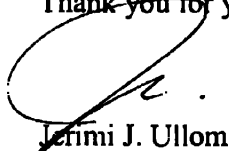
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affirmatively declare her public office in every document she executes. The notion that Ms. Mays somehow violated the Act by failing to affirm her position of State Legislator in a declaration filed with a local court and in a proceeding not involving her public office is, in a word, absurd.

As we concluded in our October 3 response, the complaint lodged by Mr. Pullins did not then and does not now allege sufficient facts to support any conclusion that either *The Indianapolis Recorder* or Ms. Mays has violated the Act. The complaint does not warrant the expenditure of additional Commission resources and should therefore be immediately dismissed.

Thank you for your consideration.



Jerimi J. Ullom

Enclosures

INDS01 JJC 993108v1

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CAUSE NO. 49D07-0610-CT-040439

PIERRE Q. PULLINS,

Plaintiff,

v.

THE GEORGE P. STEWART
PUBLISHING COMPANY d/b/a
THE INDIANAPOLIS RECORDER,
WILLIAM G. MAYS, CAROLENE MAYS,
SHANNON WILLIAMS, BRANDON A. PERRY,
AND DOES 1 TO 100,

Defendants.

FILED
(207) OCT 26 2007

Christine A. Miller
CLERK OF THE MARION SUPERIOR COURT

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ORDER OF DISMISSAL WITH PREJUDICE AND FINAL JUDGMENT

This matter came before the Court for hearing on the Motion to Dismiss filed by defendants The George P. Stewart Publishing Company d/b/a The Indianapolis, Recorder, William G. Mays, Carolene Mays, Shannon Williams, and Brandon A. Perry. The Motion sought relief on two statutory grounds: (1) the Indiana retraction statute, Ind. Code §34-15-4-2; and (2) the Indiana Anti-SLAPP¹ statute, Ind. Code §34-7-7-1 *et seq.*

The motion under the retraction statute was pursuant to Ind. Trial Rule 12(B)(1), for lack of subject-matter jurisdiction, asserting the plaintiff's failure to comply with the mandatory requirements of that statute before filing his defamation action. Thus, matters outside of the pleadings could be considered by the Court without converting that motion into a motion for summary judgment. *Fratus v. Marion Comty. Sch. Bd. of Tr.*, 749 N.E.2d 40, 43 (Ind. 2001).

¹ "SLAPP" is an acronym for "strategic lawsuit against public participation." *Poulard v. Lauth*, 793 N.E.2d 1120, 1122 n.2 (Ind. Ct. App. 2003).

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The defendants filed and designated the Verified Declaration of Carolene Mays, with specific testimony identified with particularity, in support of this aspect of their motion.

The Anti-SLAPP statute contemplates the filing of a motion to dismiss, but requires it to be considered as a motion for summary judgment. Ind. Code §34-7-7-9(a). In support of their request for relief under the Anti-SLAPP statute, the defendants filed and designated the verified declarations of Ms. Mays, , C. Denise Petty, Brandon A. Perry and Shannon Williams with specific testimony identified with particularity. In addition to this evidence, the defendants filed a supporting brief.

Being duly advised, the Court now **GRANTS** the motion in all respects. The Court finds that the plaintiff failed to comply with the mandatory requirements of the retraction statute prior to filing his defamation action. The Court also finds that the statements about which the plaintiff complains are, in context, either not defamatory, or are true or substantially true, and in any event were not published with actual malice in the constitutional sense, *i.e.*, with knowledge of falsity or with reckless disregard for the truth. *New York Times v. Sullivan*, 376 U.S. 254, 269-70 (1964); *Curtis Publishing Co. v. Butts*, 388 N.E.2d 130, 164 (1967); *Journal-Gazette Co. v. Bandido's, Inc.*, 712 N.E.2d 446, 452 (Ind. 1999). Such statements were lawful and in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, namely, the primary election for the Democratic nomination for the Seventh Congressional District. There is no genuine issue of material fact, and the defendants are entitled to judgment as a matter of law.

It is therefore **ORDERED** that this action shall be and hereby is **DISMISSED, WITH PREJUDICE**, and **JUDGMENT** shall be and hereby is **ENTERED** in favor of the defendants and against plaintiff. The Court further finds that the defendants are entitled to an award of their attorneys fees under the Anti-SLAPP Statute, Ind. Code §34-7-7-7; *Poulard v. Lauth*, 793

N.E.2d 1120, 1124-25 (Ind. Ct. App. 2003), and under Ind. Code § 34-52-1-1(b) for continuing to pursue a case that is frivolous, groundless and unreasonable. Counsel for the defendants are hereby ORDERED to submit their fee petition within twenty days of the date of this Order.

Dated: 10-26-07


The Honorable Gerald S. Zore
Judge, Marion Superior Court No. 7

Copies to:

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